IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.228 of 2007

Prakash Bhausaheb Rahane ..Appellant

Versus

State of Maharashtra ..Respondent

Mr.Z.M.Avhad for the appellant.

Mrs.S.D.Shinde APP for the State.

Coram : B.H.Marlapalle & R.S.Mohite,JJ

Date : 12.03.2007.

PC

1. Heard Mr.Avhad the learned Counsel for the applicant who is impleaded as accused no.5 in Special Case No.3 of 2004 and in the said case he has submitted an application as Exh.35 for being discharged under Section 227 of Cr.P.C. The said application has been rejected by the learned Special Judge under the MCOC Act at Nashik by her order dated 5.2.2007 and hence this appeal under section 12 of the said Act.

2. The application was filed contending that out of the 3 cases in which the applicant was arraigned as an accused, the first case has resulted in acquittal and in the 3rd case he was directed to be discharged by the learned Special Judge under MCOC Act at

Mumbai, vide his order dated 15.4.2005 and consequently, the only case that remained pending against the applicant was arrising from Crime No.52 of 2003 for the offences punishable under Sectios 302, 120(B) of IPC and under the MCOC Act as well as under the Arms Act. The learned Judge of the trial Court noted that in the case arising from Crime No.94 of 2004 the applicant was directed to be discharged by the learned Special Judge under MCOC Act vide his order dated 15.4.2005 in MCOC Special Case no.20 of 2004 which was originally registered as Crime No.237 of 2004 with the D.B.Marg police station. In addition, in the case arising from Crime No.48/94 i.e. Sessions Case No.1106/94 for the offences punishable under Sections 395 & 397 of the IPC, the applicant was acquitted as per the judgment and order dated 25.10.2005. The applicant was therefore, right in his contentions that only one case arising from Crime No.52 of 2003 remained to be decided and the said case pertained to the murder of one Vikyamal Shroff. In the said case, as per the prosecution, one of the accused viz.Ramdas P.Rahane, the brother of the present applicant, while under arrest, made statements of confession and that is how the applicant was taken into custody and was impleaded as one of the accused i.e. accused no.5.

3. The learned Judge of the Special Court referred to the decision of the Apex Court in the case of **Ranjitsing Brahmajeetsing Sharma V/s. State of Maharashtra** reported in 2005 ALL MR (Cri) 1538 (S.C.) as well as the decision of this Court (D.B) in the case of **Sherbahadur v/s.State of Maharashtra** in Criminal Appeal NO.202 of 2006 and held that even if one crime was pending against the accused, so long as prima facie case was made out that the crime was committed as a member of the organised crime Syndicate, an application for discharge under Section 392 of Cr.P.C. could not be entertained. So far as the applicant is concerned, the learned Judge noted that there was sufficient prima facie evidence to show that Ramdas Rahane i.e. the brother of the applicant and the applicant himself are the members of the organised crime syndicate of the Karach based gang headed by Daud Ibrahim Kaskar and Anees Ibrahim Kaskar. It further noted that one of the co-accused Jaswantsingh is also a member of the said organised crime and it further reveals, as per the learned Judge that, the crime was allegedly committed to eliminate Vikyamal Shroff for the consideration of financial gains. On this background, the learned Judge of the Special Court recorded his prima facie conclusions that the crime in Special Case No.3 of 2004 was committed by members of organised crime syndicate. He referred to the provisions of section 3(2) of the MCOC Act

alongwith the definition of the term ‘organised crime’ and ‘organised crime syndicate’ as appeared in section 2(1)(e) and section 2 (1)(f) of MCOC Act. We are satisfied that the view taken by the Special Court in rejecting the application filed under section 227 of Cr.P.C. cannot be termed as perverse or contrary to the law laid down by the Apex Court or this Court and therefore, this appeal must fail.

3. The appeal is hereby dismissed in limine.

(R.S.Mohite,J) **(B.H.Marlapalle,J)**